SUBJECT INDEX.

Table of Cases Cited.

Table of Statutes and Treaty Cited.

Miscellaneous.

IN THE

Supreme Court of the United States

October Term, 1938

No. 73

STATE OF MINNESOTA, by its Attorney General,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF OF MINNESOTA CHIPPEWA TRIBE AND GRAND PORTAGE-GRAND MARAIS BAND, SUBSIDIARY ORGANIZATION OF SAID TRIBE, AMICUS CURIAE.

INTRODUCTORY STATEMENT.

The Minnesota Chippewa Tribe is now, and at all times mentioned in the Brief of the State of Minnesota was, a

tribal organization, organized under and pursuant to Section 16 of the Act of June 18, 1934 (48 Stats. 984) as amended (49 Stats. 378), an Act commonly known as the Wheler-Howard Act or the Indian Reorganization Act.

Under the powers conferred by said Act and in accordance with its provisions, the Chippewa Indians of the State of Minnesota, comprising approximately 14,000 in number not including the Chippewa Indians located on the Red Lake Reservation, on June 20, 1936, duly ratified, by popular vote, a Constitution, which Constitution is now in full force and effect. Thereafter, and on the 13th day of November, 1937, there was duly issued by the Department of the Interior of the United States Government, to said Minnesota Chippewa Tribe, a corporate charter, which corporate charter is now in full force and effect.

This Brief is filed in behalf of said Minnesota Chippewa Tribe and the Grand Portage-Grand Marais Band, a unit thereof.

The Grand Portage-Grand Marais Band of Chippewa Indians are wholly without funds with which to properly prosecute this action by original petitions or otherwise and to submit an exhaustive brief, amicus curiae. Owing to this fact, it is believed the Supreme Court of the United States will take judicial notice thereof. The said Band of Chippewa Indians respectfully submit and urge the consideration by the Court of this Brief Memorandum.

STATEMENT OF CASE.

For the sake of brevity, and to save repetition, the Grand Portage-Grand Marais Band of Chippewa Indians respectfully refer the Honorable Court to the Statement of the Case as set forth in the Brief of the State of Minnesota filed herein.

ARGUMENT.

The Grand Portage-Grand Marais Band herewith incorporate by reference the full text of the Argument contained in the Brief filed by the State of Minnesota herein, but, in addition thereto submit herewith the following salient facts and law for the attention of the Court.

State trunk highway No. 61 involved herein traverses the Indian Reservation of the Grand Portage-Grand Marais Band. All the right of way for this necessary public improvement in the Reservation itself has heretofore been legally purchased by the State of Minnesota, with the exception of the several parcels of allotted lands affected in this proceeding. The Grand Portage-Grand Marais Band of the Minnesota Chippewa Tribe desires the location and construction of this important highway as now designated by the Commissioner of Highways of the State of Minnesota. While there is no express law giving the tribe itself any authority by consent or otherwise to permit the construction of this proposed highway, yet the very spirit of the Indian Reorganization Act of June 18, 1934 (48 Stats. 984), as amended by the Act of June 15, 1935 (49 Stats. 378) did bestow, we believe, upon the Chippewa Indians of Minnesota a voice in their own affairs on a matter of such vital importance as the construction of a road which would serve the community of Grand Portage in the manner set forth in the Resolutions adopted by said Tribe and the Band thereof, as hereafter set forth in full.

In view thereof, it appears to the members of the Chippewa Indian Tribe that the Bureau of Indian affairs of the Department of Interior and the Department of Justice, in opposing the condemnation proceedings of the State of Min-

nesota, has adopted and is apparently pursuing a course of action diametrically opposed to the best interests of the members of said tribe and contrary to their wishes. The Grand Portage-Grand Marais Band of Chippewa Indians have never had an adequate road leading from the Grand Portage Reservation and particularly the Indian community located at Grand Portage, Minnesota. They have lacked sufficient facilities to adequately transport their children to the high school at Grand Marais. They have lacked facilities for transportation of fish and other articles produced by said Tribe, and at many seasons of the year the existing roads serving them have been wholly impassable.

This tribe sees no reason why it should not be afforded the same traveling facilities with a modern good road of the same type and kind which have been afforded their white brethern and neighbors by the State of Minnesota in the northeastern part of the state.

The government's opposition in this case and its theory that the State of Minnesota cannot condemn allotted lands for a public purpose is both a surprise and a disappointment to this tribe. Allotted lands held by individual Indians of this tribe have in the past been acquired for various public purposes through orderly condemnation proceedings pursuant to the Act of March 3, 1901, Chapter 832, Section 3, 31 Stats. 1084 (25 U. S. C. 357). Ever since the Treaty of September 30, 1854 (10 Stats. 1109) and the Act of Congress approving, January 14, 1889 (25 Stats. 642) this tribe has been of the opinion that condemnation proceedings for certain public purposes could be had through the lands of the Grand Portage Indian Reservation.

That treaty in setting aside certain lands for the Grand Portage Band of Chippewa Indians provided in Article 3 thereof:

"All necessary roads, highways, and railroads, the lines of which may run through any of the reserved tracts, shall have the right of way through the same, compensation being made therefor as in other cases."

This court in the case of United States vs. Shoshone Tribe, 58 Supreme Court Reporter 794, in interpreting an Indian treaty, stated that the same should be interpreted and construed in the sense in which it would be understood by the Indians. This treaty, and particularly the language above quoted, should not now be interpreted narrowly, contrary to the wishes of this tribe, and in such a manner as to prevent the tribe from obtaining the use and benefits of the road right-of-way which the State of Minnesota is attempting to acquire.

The government may urge before this court as it did before the lower courts, that the Indian Reorganization Act (48 Stats. 984) as amended, repeals or supersedes the Act of March 3, 1901, Chapter 832, Sec. 3 (25 U. S. C. 357). This theory would imply that all the pre-existing direct or indirect statutes or laws of a general or special nature in relation to allotted lands have been expressly repealed by this act. Certainly Congress had no such intent in passing this act. It cannot fairly be said that said repeal is effected by implication, particularly in light of the spirit and intent of such Indian Reorganization Act. This court has stated that repeals by implication are not favored and there is no need to cite specific authorities for this common principle of law. There is no need to go into a full discussion of the Indian Reorganization Act. It can affirmatively be stated that so far as allotments are concerned the Act merely extends the periods of trust on such lands until otherwise directed by Congress. Lands of this nature therefore, are still held by the individual Indians under their trust pat-

ents, and would, therefore, still be subject to the existing acts of Congress applicable thereto, including the Act of March 3, 1901, authorising condemnation thereof for any public purpose.

The need for this road to serve the Grand Portage-Grand Marais Indians of Minnesota is clearly established by the Resolutions hereinafter set forth. These Resolutions, passed unanimously by the Executive Council of the Minnesota Chippewa Tribe and by the local council of the Grand Portage-Grand Marais Band, indicate clearly the necessity of this road to serve the Indian community of Grand Portage. The attitude of the Indians can best be expressed by the statement that they feel that the Department of the Interior will be consigning them to virtual isolation in denying them the road in question.

Herewith follows the Resolutions mentioned:

RESOLUTION ADOPTED BY
GRAND PORTAGE-GRAND MARAIS BAND OF
MINNESOTA CHIPPEWA INDIANS

"WHEREAS, there is now pending upon appeal from the Circuit Court to the Supreme Court of the United States, the case of the United States vs. the State of Minnesota and various State Highway Officials, involving the right of the State of Minnesota to condemn, for highway purposes a right-of-way over and across the Grand Portage Indian Reservation in Minnesota, being an extension of Highway 61, and

WHEREAS, there is a unanimous desire on the part of the Indian population located in said Reservation, that said proposed highway be located and constructed on and along the line surveyed by the State of Minnesota adjacent to the shore-line of Lake Superior, and

WHEREAS, a highway so located and constructed would serve to benefit our people in a matter to—

(1) Provide a suitable ingress and egress to and from our Community;

(2) Provide a necessary highway for transportation of our children to the High School at Grand Marais;

(3) Afford an all-around year road, as readily accessible in winter as in summer;

(4) Afford our people an opportunity to profit from the tourist trade, not now enjoyed;

(5) Afford a needed facility for transportation from our Reservation of fish and other articles produced by our people and allowing them access to several miles more of lake shore for their commercial fishing activities; And

WHEREAS, the location of the road as desired by the Department of the Interior is wholly contrary to the interests and needs of our people, and would be located so as to cut through the heart of our wilderness which we desire be kept inviolate,

Now, Therefore, be it Resolved by the Grand Portage and Grand Marais Band of Chippewa Indians of Minnesota that we do hereby request and direct our Tribal Attorney to file a brief in said appeal in our behalf with the Supreme Court of the United States, setting forth reasons in support of the location of the extension of said Highway 61 over and across our Reservation in the manner proposed by the State of Minnesota.

Be it further resolved that this resolution constitute a direct appeal to the United States Supreme Court for the relief herein requested and that this resolution be incorporated in our brief to be filed in said case.

Be it further resolved that we do hereby request that the Tribal Executive Committee of the Minnesota Chippewa Tribe endorse this resolution.

SAM CRAWFORD,
Chairman of Council,
Grand Portage Band of Chippewa
Indians in Minnesota.

JOHN FLATTE,
Secretary."

RESOLUTION ADOPTED BY TRIBAL EXECUTIVE COMMITTEE OF THE MINNESOTA CHIPPEWA INDIANS.

"BE IT RESOLVED That the Tribal Executive Committee does hereby authorize and instruct its Tribal Attorney to file a brief in the appeal before the United States Supreme Court in the case involving the right of the State of Minnesota to construct Highway No. 61 over and across the Grand Portage Reservation in accordance with the Resolution adopted by the Local Council of the Grand Portage-Grand Marais Band of Chippewa Indians of Minnesota, copy of which resolution is herewith incorporated, as follows:

"WHEREAS, there is now pending upon appeal from the Circuit Court to the Supreme Court of the United States, the case of the United States vs. the State of Minnesota and various State Highway Officials, involving the right of the State of Minnesota to condemn, for highway purposes a right-of-way over and across the Grand Portage Indian Reservation in Minnesota, being an extension of Highway 61, and

WHEREAS, there is a unanimous desire on the part of the Indian population located in said Reservation, that said proposed highway be located and constructed on and along the line surveyed by the State of Minnesota adjacent to the shore-line of Lake Superior, and

WHEREAS, a highway so located and constructed would serve to benefit our people in a manner to:

(1) Provide a suitable ingress and egress to and from our Community;

(2) Provide a necessary highway for transportation of our children to the High School at Grand Marais;

(3) Afford an all-around year road, as readily accessible in winter as in summer;

(4) Afford a needed facility for transportation from our Reservation of fish and other articles produced by our people and allowing them access to several miles

more of lake shore for their commercial fishing activities; and

WHEREAS, the location of the road as desired by the Department of the Interior is wholly contrary to the interests and needs of our people, and would be located so as to cut through the heart of our wilderness which we desire be kept inviolate,

NOW, THEREFORE, Be it Resolved by the Grand Portage and Grand Marais Band of Chippewa Indians of Minnesota that we do hereby request and direct our Tribal Attorney to file a brief in said appeal in our behalf with the Supreme Court of the United States, setting forth reasons in support of the location of the extension of said Highway 61 over and across our Reservation in the manner proposed by the State of Minnesota.

Be it further resolved that this resolution constitute a direct appeal to the United States Supreme Court for the relief herein requested and that this resolution be incorporated in our brief to be filed in said case.

BE IT FURTHER Resolved that we do hereby request that the Tribal Executive Committee of the Minnesota Chippewa Tribe endorse this resolution.'

(Adopted at June 6, 1938, meeting.)

T. J. FAIRBANKS,
Secretary
Minnesota Chippewa Tribe."

CONCLUSION.

Your petitioners respectfully urge upon the Court that the wishes and welfare of the Minnesota Chippewa Tribe be granted in order that they may be afforded the facilities of a highway to serve the necessary requirements of the Grand Portage Reservation and the Chippewa Indians living thereon.

WHEREFORE, Petitioners pray that the judgment of the United States Circuit Court of Appeals, Eighth Circuit, be

in all things reversed and that the order of the Federal District Court, District of Minnesota, Fifth Division, granting the condemnation of the State of Minnesota, be in all things affirmed.

Respectfully submitted,

JOHN H. HOUGEN,
Tribal Attorney,
Minnesota Chippewa Tribe and
Grand Portage-Grand Marais
Band thereof,
Rand Tower,
Minneapolis, Minnesota.

SUPREME COURT OF THE UNITED STATES.

No. 73.—October Term, 1938.

State of Minnesota, vs. United States. } On Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[January 3, 1939.]

Mr. Justice Brandeis delivered the opinion of the Court.

Minnesota brought in a court of the State this proceeding to take by condemnation pursuant to its laws a right of way for a highway over nine allotted parcels of land which form parts of the Grand Portage Indian Reservation, granted for the Band of Chippewa Indians of Lake Superior by Treaty of September 30, 1854 (10 Stat. 1109) and the Act of Congress, January 14, 1889, c. 24, 25 Stat. 642. The parcels had been allotted in severalty to individual Indians by trust patents. The highway was located pursuant to requirements of the Constitution of the State. It was not shown that authority had been obtained from the Secretary of the Interior for the construction of the highway over the Indian lands. The petition named as persons interested the owners under the Indian allotments, the Superintendent of the Consolidated Chippewa Agency, and the United States, as holder of the fee in trust.

The United States was named as a party defendant. The United States Attorney, appearing specially for the United States and generally for the other respondents, filed a petition for the removal of the cause to the federal court. He and counsel for the State stipulated that the cause "may be [so] removed." The state court ordered removal. In the federal court, the United States, appearing specially, moved to dismiss the action on the ground that it had not consented to be sued and that the state court had no jurisdiction of the action or over the United States. The motion to dismiss was denied on the ground that the United States is not a necessary party, since "consent . . . to bring these proceedings against the Indian allottees has been expressly granted and given by the United States to the State of Minnesota, pursuant

to 25 United States Code Annotated, Section 357," (Act of March 3, 1901, c. 832, Sec. 3, 31 Stat. 1058, 1083-84), the second paragraph of which provides:

"That lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee."

The petition for condemnation was granted.

Upon appeal by the United States, the Circuit Court of Appeals held that the State was without power to condemn the Indian lands unless specifically authorized so to do by the Secretary of the Interior, as provided in Section 4 of the Act of 1901, which provides:

"That the Secretary of the Interior is hereby authorized to grant permission, upon compliance with such requirements as he may deem necessary, to the proper State or local authorities for the opening and establishment of public highways, in accordance with the laws of the State or Territory in which the lands are situated . . . through any lands which have been allotted in severalty to any individual Indians . . . but which have not been conveyed to the allottees with full power of alienation."

It held, further, that as such authorization had not been shown, the United States had not consented to the maintenance of the condemnation suit against it; that the court was without jurisdiction to proceed; and that the fact that removal from the state court to the federal court had been obtained by the United States Attorney by stipulation had not effected a general appearance. The Circuit Court of Appeals, therefore, reversed the judgment of the District Court with directions to dismiss. 95 F. (2d) 468. Certiorari was granted because of alleged conflict with the established administrative practice under the applicable statutes and the importance of the question presented. 305 U. S. —.

The State contends that it had power, and its courts jurisdiction, to condemn the allotted lands without making the United States a party to the proceedings: (1) because authorized so to do by the second paragraph of Section 3 of the Act of March 3, 1901, quoted above; (2) because authorized so to do by the Treaty of September 30, 1854, 10 Stat. 1109, 1110, approved by Congress January 14, 1889, which provided in Article III—

"All necessary roads, highways, and railroads, the lines of which may run through any of the reserved tracts, shall have the right

of way through the same, compensation being made therefor as in other cases."

(3) because the State, in its sovereign capacity and in the exercise of its governmental functions in the location and construction of a constitutional state truck highway required to be so located and constructed by its constitution and laws, may, without express congressional authority therefor, exercise its inherent power of eminent domain for such purpose over lands so allotted in severalty to individual Indians.

The Minnesota Chippewa Tribe and the Grand Portage-Grand Marais Band thereof filed by the tribal attorney a brief praying that the judgment of the Circuit Court of Appeals be reversed and that of the District Court affirmed.

First. The United States is an indispensable party defendant to the condemnation proceedings. A proceeding against property in which the United States has an interest is a suit against the United States. *The Siren*, 7 Wall. 152, 154; *Carr* v. *United States*, 98 U. S. 433, 437; *Stanley* v. *Schwalby*, 162 U. S. 255. Compare *Utah Power & Light Co.* v. *United States*, 243 U. S. 389. It is confessedly the owner of the fee of the Indian allotted lands and holds the same in trust for the allottees. As the United States owns the fee of these parcels, the right of way cannot be condemned without making it a party.[1] The exemption of the United States from being sued without its consent extends to a suit by a state. Compare *Kansas* v. *United States*, 204 U. S. 331, 342; *Arizona* v. *California*, 298 U. S. 558, 568, 571, 572. Compare *Minnesota* v. *Hitchcock*, 185 U. S. 373, 382-387; *Oregon* v. *Hitchcock*, 202 U. S. 60. Hence Minnesota cannot maintain this suit against the United States unless authorized by some act of Congress.

[1] The fee of the United States is not a dry legal title divorced from substantial powers and responsibilities with relation to the land. United States v. Rickert, 188 U. S. 432; compare Tiger v. Western Investment Co., 221 U. S. 286; Brader v. James, 246 U. S. 88. In the case of patents in fee with restraints on alienation it is established that an alienation of the Indian's interest in the lands by judicial decision in a suit to which the United States is not a party has no binding effect but that the United States may sue to cancel the judgment and set aside the conveyance made pursuant thereto. Bowling & Miami Investment Co. v. United States, 233 U. S. 528; Privett v. United States, 256 U. S. 201; Sunderland v. United States, 266 U. S. 226. In the stronger case of a trust allotment, it would seem clear that no effective relief can be given in a proceeding to which the United States is not a party and that the United States is therefore an indispensable party to any suit to establish or acquire an interest in the lands. Compare McKay v. Kalyton, 204 U. S. 458.

Minnesota contends that the United States is not an indispensable party. It argues that since the second paragraph of Section 3 of the Act of March 3, 1901, provides that "the money awarded as damages shall be paid to the allottee", the United States has no interest in the land or its proceeds after the condemnation is begun.[2] Under Section 5 of the General Allotment Act, Act of February 8, 1887, c. 119, 24 Stat. 388, 389, U. S. C. Title 25, § 348, the Indians' interest in these allotted lands was subject to restraints on alienation;[3] and by Section 2 of the Indian Reorganization Act, Act of June 18, 1934, c. 576, 48 Stat. 984, U. S. C. Title 25, § 462, restraints on alienation were extended. The clause quoted may not be interpreted as freeing the allottee's land from the restraint imposed by other acts of Congress. As the parcels here in question were restricted lands, the interest of the United States continues throughout the condemnation proceedings. In capacity as trustee for the Indians it is necessarily interested in the outcome of the suit —in the amount to be paid. That it is interested, also, in what shall be done with the proceeds is illustrated by the Act of June 30, 1932, c. 333, 47 Stat. 474, U. S. C. Title 25, § 409a, under which the Secretary of the Interior may determine that the proceeds of the condemnation of restricted Indian lands shall be reinvested in other lands subject to the same restrictions.[4]

---

[2] The extent of the restraints on alienation contained in Section 5 of the General Allotment Act was clarified and modified to some extent by subsequent legislation. E. g., Act of May 27, 1902, c. 888, § 7, 32 Stat. 245, 275; Act of May 8, 1906, c. 2348, 34 Stat. 182; Act of March 1, 1907, c. 2285, 34 Stat. 1015, 1018; Act of May 29, 1908, c. 216, 35 Stat. 444; Act of June 25, 1910, c. 431, §§ 1-5, 36 Stat. 855-56; Act of May 18, 1916, c. 125, 39 Stat. 123, 127; U. S. C. Title 25, §§ 349, 372, 373, 378, 379, 392, 403, 404, 405, 408. Under Section 4 of the Indian Reorganization Act, applicable to all Indian Reservations unless a majority of the adult Indian vote against its application, the transferability of restricted Indian lands is greatly limited. Act of June 18, 1934, c. 576, 48 Stat. 984, U. S. C. Title 25, § 464.

[3] Compare the Act of March 1, 1907, c. 2285, 34 Stat. 1018, U. S. C. Title 25, § 405; Act of June 25, 1910, c. 431, §§ 4, 8, 36 Stat. 856-57; U. S. C. Title 25, §§ 403, 406.

[4] Whenever any nontaxable land of a restricted Indian of the Five Civilized Tribes or of any other Indian tribe is sold to any State, county, or municipality for public improvement purposes, or is acquired, under existing law, by any State, county, or municipality by condemnation or other proceedings for such public purposes, or is sold under existing law to any other person or corporation for other purposes, the money received for said land may, in the discretion and with the approval of the Secretary of the Interior, be reinvested in other lands selected by said Indian, and such land so selected and purchased shall be restricted as to alienation, lease or incumbrance, and nontaxable in the same quantity and upon the same terms and conditions as the nontaxable lands from which the reinvested funds were derived, and such restrictions shall appear in the conveyance." See also note 7, *infra*.

Second. Minnesota contends that Congress has authorized suit against the United States. It is true that authorization to condemn confers by implication permission to sue the United States. But Congress has provided generally for suits against the United States in the federal courts. And it rests with Congress to determine not only whether the United States may be sued, but in what courts the suit may be brought. This suit was begun in a state court. The fact that the removal was effected on petition of the United States and the stipulation of its attorney in relation thereto are facts without legal significance. Where jurisdiction has not been conferred by Congress, no officer of the United States has power to give to any court jurisdiction of a suit against the United States. Compare *Case* v. *Terrell*, 11 Wall. 199, 202; *Carr* v. *United States*, 98 U. S. 433, 435-39; *Finn* v. *United States*, 123 U. S. 227, 232-33; *Stanley* v. *Schwalby*, 162 U. S. 255, 270; *United States* v. *Garbutt Oil Co.*, 302 U. S. 528, 533-35. If Congress did not grant permission to bring this condemnation proceeding in a state court, the federal court was without jurisdiction upon its removal. For jurisdiction of the federal court on removal is, in a limited sense, a derivative jurisdiction. Where the state court lacks jurisdiction of the subject matter or of the parties, the federal court acquires none, although in a like suit originally brought in a federal court it would have had jurisdiction. *Lambert Run Coal Co.* v. *Baltimore & Ohio R. R. Co.*, 258 U. S. 377, 383; *General Investment Co.* v. *Lake Shore Ry. Co.*, 260 U. S. 261, 288.

Third. Minnesota contends that Congress authorized suit in a court of the state by providing in the second paragraph of Section 3 of the Act of March 3, 1901, quoted above, for "condemnation of" lands allotted in severalty to Indians "in the same manner as land owned in fee." But the paragraph contains no permission to sue in the court of a state. It merely authorizes condemnation for "any public purpose under the laws of the State or Territory where located." There are persuasive reasons why that statute should not be construed as authorizing suit in a state court. It relates to Indian lands under trust allotments—a subject within the exclusive control of the federal government. The judicial determination of controversies concerning such lands has been commonly committed exclusively to federal courts.[5]

[5] Compare McKay v. Kalyton, 204 U. S. 458; 28 Stat. 305; 31 Stat. 760; U. S. C. Title 25, § 345. The United States argues that a statute granting permission to sue the United States must be construed to apply only to

Minnesota asserted in support of its interpretation of the paragraph that by long established administrative practice such condemnation proceedings are brought in the state court and without making the United States a party.[6] The assertion was denied by the Government. As the brief of neither counsel furnished adequate data as to the administrative practice, they were requested at the oral argument to furnish the data thereafter. From the report then submitted by the Solicitor General it appears that throughout a long period the Secretary of the Interior has insisted in Minnesota and in other States, that condemnation suits must be brought in a federal court and that the United States must be made a party defendant.[7]

As the lower court had no jurisdiction of this suit, we have no occasion to consider whether, as a matter of substantive law, the lack of assent by the Secretary of the Interior precluded maintenance of the condemnation proceeding.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

the federal courts unless there is an explicit reference to the state tribunals citing Stanley v. Schwalby, 162 U. S. 255, 270; United States v. Inaba, 291 Fed 416, 418; United States v. Deasy, 24 F. (2d) 108, 110. This is not universally true even as to suits against the United States itself. United States v. Jones 109 U. S. 513. And in many instances the state courts have been held to have jurisdiction of suits against the instrumentalities and officers of the United States which directly affect its property interests without such specific statutory authorization. Missouri Pacific R. R. v. Ault, 256 U. S. 554; Sloan Shipyards v. United States Shipping Board Emergency Fleet Corporation, 258 U. S. 549, 568-69; Olson v. United States Spruce Production Corporation, 267 U. S. 462; Federal Land Bank v. Priddy, 295 U. S. 229, 235-37. Compare Davis v. L. N. Dantzler Lumber Co., 261 U. S. 280.

[6] In 35 Land Decisions 648 the Acting Secretary of the Interior handed down on June 29, 1907, an opinion which recognized, without any discussion, the validity of a condemnation proceeding brought under the second paragraph of the Act of March 3, 1901, in a state court, it not appearing that the United States was joined as a party.

[7] See also Regulation 69½ of the Regulations of the Department of the Interior, "Concerning Rights of Way over Indian Lands," adopted in the general revision of April 7, 1938, which provides: "As the holder of the legal title to allotted Indian lands held in trust, the United States must be made a party to all such condemnation suits and the action must be brought in the appropriate federal district court, the procedure, however, to follow the provisions of the State law on the subject, so far as applicable."